

Luz Construction, Inc., a Division of Luz International Limited and Dale Bagley. Case 31-CA-18954

March 24, 1992

### DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND OVIATT

Upon a charge filed by Dale Bagley on July 12, 1991, the General Counsel of the National Labor Relations Board issued a complaint on September 19, 1991, against Luz Construction, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On February 10, 1992, the General Counsel filed a Motion for Summary Judgment. On February 14, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

#### Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that counsel for the General Counsel, by letter dated December 17, 1991, notified the Respondent's vice president and general counsel that unless an answer was received by the close of business December 27, 1991, the Region would consider filing a Motion for Summary Judgment. Thereafter, counsel for the General Counsel, by letter dated January 7, 1992, notified the Respondent's vice president and the general counsel that the Region intended to file a Motion for Summary Judgment since no answer had been filed.

In the absence of good cause being shown for the failure to file a timely answer,<sup>1</sup> we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

### FINDINGS OF FACT

#### I. JURISDICTION

The Respondent is a California corporation, with an office and principal place of business located in Boron, California, where it is engaged in the construction of solar electric powerplants. The Respondent, in the course and conduct of its business operations, annually purchases and receives goods or services valued in excess of \$50,000 directly from suppliers located outside the State of California. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Southern California Pipe Trades District Council 16, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

#### II. ALLEGED UNFAIR LABOR PRACTICES

On or about June 12, 1991, Respondent discharged Dale Bagley, and since that date has failed and refused to reinstate him to his former position of employment because he joined, assisted, or evidenced support for the Union, or because he engaged in other protected concerted activities for the purposes of collective bargaining or other mutual aid or protection. We find that the Respondent's conduct constitutes discrimination in regard to the hire or tenure or terms and conditions of employment, thereby discouraging membership in a labor organization, in violation of Section 8(a)(3) and (1) of the Act.

### CONCLUSION OF LAW

By discriminatorily discharging Dale Bagley on or about June 12, 1991, and thereafter failing and refusing to reinstate him to his former position of employment, because he joined, assisted, or evidenced support for the Union, or because he engaged in other protected concerted activities for the purposes of collective bargaining or other mutual

<sup>1</sup> The exhibits to the General Counsel's motion indicate that the Respondent's failure to file an answer is based, at least in part, on the fact that Respondent had filed a bankruptcy petition on November 25, 1991. However, it is well established that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. *Phoenix Co.*, 274 NLRB 995 (1985). Board proceedings fall within the exception to the automatic stay provision for proceedings by a governmental unit to enforce its police or regulatory powers. See *id.*, and cases cited therein.

aid or protection, the Respondent engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent discriminatorily discharged and refused to reinstate Bagley, we shall order the Respondent to offer him immediate and full reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed, and to make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him with backpay to be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

#### ORDER

The National Labor Relations Board orders that the Respondent, Luz Construction, Inc., A Division of Luz International Limited, Boron, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging, refusing to reinstate, or otherwise discriminating against employees because of their union or other protected concerted activities.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Dale Bagley immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of this decision.

(b) Remove from its files any reference to the unlawful discharge and notify the employee in writing that this has been done and that the discharge will not be used against him in any way.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Boron, California, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

#### APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT discharge, refuse to reinstate, or otherwise discriminate against employees because of their union or other protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Dale Bagley immediate and full reinstatement to his former job or, if that job no longer exists, to substantially equivalent positions, without prejudice to his seniority or any other rights or privileges previously enjoyed, and we WILL make him whole for any loss of earnings and other benefits resulting from his discharge.

WE WILL notify him that we have removed from our files any reference to his discharge and that the discharge will not be used against him in any way.

LUZ CONSTRUCTION, INC., A DIVI-  
SION OF LUZ INTERNATIONAL LIMIT-  
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